

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

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REGULATORY AUTH.
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In re:)
BellSouth Telecommunications, Inc.'s)
Entry Into Long Distance (InterLATA))
Service in Tennessee Pursuant to)
Section 271 of the Telecommunications)
Act of 1996)

OFFICE OF THE
DOCKET NO. 97-00309

**RESPONSE OF
AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, LLC,
TCG MIDSOUTH, INC., MCI WORLD COM COMMUNICATIONS, INC., MCIMETRO
ACCESS TRANSMISSION SERVICES, LLC AND BROOKS FIBER
COMMUNICATIONS OF TENNESSEE, INC. TO THE PROPOSED HEARING DATES**

In response to the Notice issued on May 24, 2002 by the Tennessee Regulatory Authority ("TRA" or "the Authority") AT&T Communications of the South Central States, Inc. and TCG MidSouth, Inc. (collectively "AT&T"), and MCI WorldCom Communications, Inc., MCImetro Access Transmission Services, LLC and Brooks Fiber Communications of Tennessee, Inc. (collectively "WorldCom") submit the following response to the Proposed Hearing Dates.

SUMMARY

On April 26, 2002, BellSouth Telecommunications, Inc. ("BellSouth") submitted its third Section 271 filing with the Authority. BellSouth's filing, however, is incomplete in two significant respects. First, BellSouth's Section 271 filing is not complete because BellSouth cannot present evidence that it provides nondiscriminatory access to its Operations Support Systems ("OSS") in Tennessee, a critical component necessary to demonstrate compliance with Section 271 of the Telecommunications Act of 1996 ("the Act"). Second, BellSouth has indicated that it will not provide performance data according to the performance measurements adopted by the Authority in Docket No. 01-00193. Rather than commit the resources to

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implement that Order so this Authority can review Tennessee-specific data, BellSouth seeks to demonstrate compliance with Section 271 in Tennessee with data provided under the Georgia SQM.¹ This is particularly inappropriate given the Authority's recent decision that BellSouth's OSS are not regional.

Although BellSouth enjoys the unilateral discretion regarding when to file its Section 271 application, it must "fully appreciate the timing implications of its filing."² Moreover, the Authority should not waste scarce resources evaluating an incomplete filing that fails to provide data in compliance with the Authority's performance measures order. Accordingly, AT&T respectfully requests that the TRA suspend its evaluation of BellSouth's 271 filing until BellSouth (1) provides the Authority a complete Section 271 filing, including a decision in the OSS Docket that BellSouth provides nondiscriminatory access to its OSS; (2) implements Tennessee's performance measures plan; and (3) produces Tennessee-specific data in accordance with Tennessee's performance measures plan.

ARGUMENT

I. BELL SOUTH'S TENNESSEE 271 FILING CANNOT BE COMPLETE UNTIL THE AUTHORITY RESOLVES OPEN ISSUES IN THE OSS DOCKET

When BellSouth withdrew its initial 271 application in 1999, the Authority advised that it "should not refile with the Authority until such time as BellSouth is persuaded that it is in compliance with Section 271 of the Act."³ In order to comply with Section 271, an incumbent

¹ Direct Testimony of Alphonso J. Varner, filed April 26, 2002, at 8 (indicating that BellSouth's proposed interim SQM is the same SQM adopted in Georgia).

² *Initial Order of the Hearing Officer on July 12, 2001, Status Conference*, Dckt. No. 97-00309, at 5-6 (Aug. 10, 2001) ("*Initial Order – July 12, 2001*").

³ *Initial Order – July 12, 2001* at 4-5.

local exchange carrier (“ILEC”) must demonstrate that it provides nondiscriminatory access to its OSS.⁴ An examination of an ILEC’s OSS performance is integral to a “determination of whether [the ILEC] is offering all of the items contained in the competitive checklist.”⁵ As the FCC has explained, in addition to being critical to an evaluation of checklist items 2 and 14 pertaining to unbundled network elements and resale, access to OSS is “embodied” in the other checklist items as well.⁶ Thus, as part of an ILEC’s “demonstration that it is ‘providing’ a checklist item . . . [the ILEC] must demonstrate that it is providing nondiscriminatory access to the systems, information, and personnel that support that element or service.”⁷

Recognizing the importance of OSS, the Authority established a separate docket to ensure that BellSouth provides nondiscriminatory access to its OSS in accordance with state and federal law.⁸ When opening the separate OSS Docket, the Authority affirmed that “nondiscriminatory access to OSS is a *prerequisite* to the development of meaningful competition.”⁹

⁴ *Order Consolidating Docket Nos. 99-00347 and 00-00392 into Docket No. 01-00193 and Opening Docket No. 01-00362*, Dckt. No. 01-00193, at 2-3 (May 15, 2001) (“*Order Establishing OSS Docket*”); see also Memorandum Opinion and Order, *In the Matter of Application by Bell Atlantic New York for Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd. 3953 ¶ 84 (F.C.C. Dec. 22, 1999) (No. CC 99-295, FCC 99-404) (“*Bell Atlantic New York Order*”).

⁵ *Bell Atlantic New York Order* ¶ 84 n.202.

⁶ *Bell Atlantic New York Order* ¶ 84.

⁷ *Bell Atlantic New York Order* ¶ 84 n.202.

⁸ See *Order Establishing OSS Docket*. Phase I of the OSS Docket is complete and the TRA issued its ruling on May 21, 2002. Phase II’s schedule is forthcoming.

⁹ *Order Establishing OSS Docket* at 6 (emphasis added).

Indeed, BellSouth has recognized that it must “prove its case to the TRA, both on access to OSS and every other checklist item.”¹⁰ As the Authority has observed, BellSouth does not contest that the OSS Docket contains “subject matter that BellSouth must rely upon in support of its Tennessee 271 application.”¹¹

Without a showing of nondiscriminatory access to its OSS, BellSouth’s application is incomplete. According to its April 26, 2002 filing, BellSouth seeks to have the Authority “affirm that BellSouth has met the requirements of the fourteen-point checklist.”¹² BellSouth, however, does not have a decision from the Authority in its OSS Docket that it provides nondiscriminatory access to its OSS. Because nondiscriminatory access to OSS is integral to demonstrating compliance with Section 271, it is difficult to comprehend how BellSouth can urge the Authority to move ahead hastily and affirm its compliance.

A. BellSouth Has Previously Represented That The OSS And 271 Dockets Should Proceed “In Sync” Or “In Parallel” With One Another

BellSouth has repeatedly represented to the Authority that its OSS and 271 Dockets should proceed “in sync” or “in parallel” with one another.¹³ According to BellSouth in July 2001, “the TRA should promptly address BellSouth’s Section 271 compliance through multiple dockets proceeding in parallel – the efficient way to address the complex Section 271 issues that

¹⁰ *BellSouth Telecommunications, Inc.’s Reply to AT&T’s Motion to Dismiss BellSouth’s Proposed Section 271 Schedule and the Response of XO Tennessee and Time Warner Telecom to AT&T’s Motion to Dismiss* at 5, Dckt. No. 97-00309, filed July 26, 2001 (“*BellSouth’s Reply to AT&T’s Motion to Dismiss*”).

¹¹ *Initial Order – July 12, 2001* at 9.

¹² *Ruscilli Direct* at 6.

¹³ *See, e.g., BellSouth’s Reply to AT&T’s Motion to Dismiss* at 5; *Initial Order – July 12, 2001* at 11 n.36. In August 2001, it was the Authority’s “expectation” that it would “have completed its OSS Docket prior to BellSouth filing its Tennessee 271 application before the FCC.” *Initial Order – July 12, 2001* at 11.

the Authority has already adopted.”¹⁴ Indeed, BellSouth argued to the Authority in July 2001 that the dockets could and should “proceed in parallel.”¹⁵ Moreover, counsel for BellSouth noted in proceedings before the Authority that “it is important to keep the timing of these two dockets in sync.”¹⁶ According to BellSouth, “the TRA established a roadmap for evaluation of BellSouth’s Section 271 application. The Authority chose to divide the issues into separate proceedings, and has been moving forward with these proceeding simultaneously. By using parallel proceedings, the Authority is able to address the complex Section 271 issues more quickly and efficiently.”¹⁷ The Authority should not depart from this roadmap. Proceeding now with review of BellSouth’s Section 271 compliance without completion of Phase II of the OSS docket is untimely, inefficient and “out of sync” with an orderly and complete review.

B. BellSouth Cannot Establish That it is Providing Nondiscriminatory Access To Its OSS At This Time

BellSouth’s recent 271 filing is unclear regarding how and when BellSouth intends to demonstrate it provides nondiscriminatory access to its OSS. Testimony submitted by BellSouth in the 271 Docket indicates that it is asking the Authority to “affirm that BellSouth has met the requirements of the fourteen-point competitive checklist,”¹⁸ yet BellSouth repeatedly directs the Authority to testimony “filed” in the OSS Docket for evidence it provides nondiscriminatory

¹⁴ *BellSouth’s Reply to AT&T’s Motion to Dismiss* at 2

¹⁵ *BellSouth’s Reply to AT&T’s Motion to Dismiss* at 5.

¹⁶ *Initial Order – July 12, 2001* at 11 n.36.

¹⁷ *BellSouth’s Reply to AT&T’s Motion to Dismiss* at 4-5.

¹⁸ *Ruscilli Direct* at 6.

access to its OSS.¹⁹ For example, according to testimony filed by BellSouth on April 26, 2002, “[a]ccess to OSS will be addressed in the testimony of Mr. Pate, Mr. Ainsworth, Mr. Scollard and Mr. McElroy filed in Docket No. 01-00362.”²⁰ The procedural schedule for Phase II of the OSS Docket, however, has not been set. In the OSS docket, the Authority just completed Phase I by determining that BellSouth’s OSS are not regional. Accordingly, consideration of BellSouth’s 271 filing should be suspended until such time as the Authority has completed Phase II of that docket and determined whether BellSouth provides nondiscriminatory access to its OSS in Tennessee.

II. BELLSOUTH’S SECTION 271 FILING IS INCOMPLETE BECAUSE BELLSOUTH HAS NOT IMPLEMENTED THE PERFORMANCE MEASURES ADOPTED BY THE TRA

The Authority adopted its own performance measurements on May 14, 2002 to be used to evaluate BellSouth’s Section 271 compliance. In its performance measurements order, the Authority explained that “[t]he performance measurements, benchmarks and enforcement mechanisms adopted herein also provide a vehicle for determining whether BellSouth provides nondiscriminatory access to its network elements, one of the requirements that must be satisfied before BellSouth’s application to provide interLATA long distance service pursuant to 47 U.S.C. § 271 can be approved.”²¹ Indeed, the Authority stated clearly in its performance measurements order that the “benchmarks for the performance measurements adopted herein represent levels of

¹⁹ See, e.g., Ruscilli Direct at 9; *id.* at 17; *id.* at 52.

²⁰ Direct Testimony of John Ruscilli, filed April 26, 2002, at 52; *see also id.* at 9 & 17.

²¹ *Order Setting Performance Measurements, Benchmarks and Enforcement Mechanisms*, Dckt. No. 01-00193, at 10 (May 14, 2002).

service that BellSouth *must* achieve in order to meet the requirement of nondiscriminatory access.”²² Accordingly, the performance measurements adopted by the Authority “*shall* be used to evaluate whether BellSouth is providing nondiscriminatory access to its network.”²³ Until such time as BellSouth has implemented the performance measurements adopted by the Authority and produced data according to those measures, the Authority cannot adequately evaluate whether BellSouth has achieved the levels of service necessary to foster competition in Tennessee.

As the FCC has explained “[p]erformance measurements are an especially effective means of providing . . . evidence of the quality and timeliness of the access provided by [an ILEC] to requesting carriers.”²⁴ The FCC encourages “[a]n extensive and rigorous evaluation” of the ILEC’s performance by the individual states.²⁵ Indeed, the FCC has acknowledged that the individual states may set performance standards necessary to demonstrate that the nondiscrimination standard has been met.²⁶ The Authority has undertaken a thorough review of BellSouth’s performance measures in Docket No. 01-00193 and adopted those measures it believes are necessary for an effective evaluation of BellSouth’s performance in Tennessee.

²² *Id.* at 23 (emphasis added).

²³ *Id.* (emphasis added).

²⁴ Memorandum Opinion and Order, *In the Matter of Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, 15 FCC Rcd. 18,354 ¶ 53 (F.C.C. June 30, 2000) (No. CC 00-65, FCC 00-238) (“SWBT Texas Order”).

²⁵ *SWBT Texas Order* ¶ 54.

²⁶ *SWBT Texas Order* ¶ 55 & n.102. When a state determines its appropriate performance levels by undertaking a rigorous proceeding in collaboration with CLECs, the FCC is much more likely to rely on those standards and measurements in its own analysis. *Id.* ¶ 56.

BellSouth, however, has failed to implement the Authority's order. Rather than implement the performance measures adopted by the Authority, including the requirements for state-specific data, BellSouth continues to urge the Authority to allow it to use the Georgia SQM which includes regional data for many measures. In Phase I of the OSS Docket, however, the Authority rejected BellSouth's claims that its OSS were sufficiently regional such that performance data and third-party test results from other states would be applicable to Tennessee.²⁷ In light of the Authority's recent decision that BellSouth's OSS are not sufficiently regional, regional data produced under the Georgia SQM are particularly inappropriate.

A. State-Specific Performance Data Is Critically Important To A Determination Of BellSouth's Compliance With Section 271 In Tennessee

The primary goal of the benchmarks adopted by the Authority "is to prevent CLECs operating in Tennessee from receiving service inferior to that which BellSouth provides to itself or CLECs operating in other states."²⁸ Indeed, Director Greer noted that state-specific flow-through data was "necessary and useful information for the Phase One hearing" in the OSS Docket.²⁹ Moreover, for preordering and ordering, Director Malone indicated that BellSouth did not address the regionality of its Performance Measures Plan at all in its regionality case.³⁰ With regard to provisioning, BellSouth failed to demonstrate the regionality of its SQM.³¹ According

²⁷ *Transcript of Directors' Conference*, at 33-41 (May 21, 2002) (finding that BellSouth failed to demonstrate that its systems, methods, and procedures for pre-ordering, ordering, provisioning, billing, and maintenance and repair were regional).

²⁸ *Order Setting Performance Measurements, Benchmarks and Enforcement Mechanisms* at 23-24.

²⁹ *Transcript of Directors' Conference* at 42.

³⁰ *Transcript of Directors' Conference* at 33, 35.

³¹ *Id.* at 37.

to Director Greer with regard to state-specific flow through data, “the disparities in BellSouth’s performance in Georgia, Florida, and Tennessee, for example, do not happen by chance.”³² Moreover, the disparities were “large in magnitude and in statistical significance.”³³ In light of the Authority’s decision on regionality, it would be inappropriate for BellSouth to rely on regional data produced under the Georgia SQM. BellSouth should be required to implement the Authority’s performance measures order, including the critical state-specific measures, so this Authority can make a decision on whether BellSouth provides nondiscriminatory access in Tennessee.

B. BellSouth Has Not Implemented State-Specific Performance Measurements In Accordance With The Authority’s Order

BellSouth states that certain of its performance “measurements are regional in nature.”³⁴ This Authority ordered state-specific measurements. Under the Authority’s performance measurements order, several measures must be implemented immediately, while others must be implemented within 90 days. In BellSouth’s view, its “ability to comply with the time frames established by the Order is complicated by the Order’s apparent requirement that a number of [its] regional processes and regional measurements be converted to measurements that have Tennessee-specific data.”³⁵ Indeed, in its Motion to Stay the Authority’s performance measurements order, BellSouth claims that at least 17 measures will have to be changed from

³² *Id.* at 49.

³³ *Id.*

³⁴ *BellSouth Telecommunications, Inc.’s Motion for Reconsideration*, Dckt. No. 01-00193, at 20 (May 29, 2002).

³⁵ *Id.*

regional to state-specific.³⁶ According to BellSouth, these changes will implicate another forty to fifty measures.³⁷ BellSouth claims it cannot convert these regional measures in the time allotted by the Authority.³⁸ According to BellSouth, it would not be unreasonable for implementation of these changes “to take months, perhaps a year or longer.”³⁹

C. BellSouth Has Been On Notice Since At Least July 2001 That State-Specific Data Was Required By The Authority For All Measurements

BellSouth did not begin to implement state-specific performance measures during Fall 2001 or earlier despite knowledge since at least August 2001 that the Authority requires state-specific data in its evaluation of BellSouth’s compliance with Section 271. On August 10, 2001, the Authority noted that according to counsel for BellSouth the SQMs BellSouth planned to file in Tennessee would contain Tennessee-specific data for only the provisioning and maintenance and repair measurements.⁴⁰ “The Authority, however, [requested] Tennessee-specific data for all measurements.”⁴¹

Rather than implement the Authority’s requirements, BellSouth would rather delay implementation in hopes of avoiding the Authority’s requirements altogether in its presentation

³⁶ *BellSouth Telecommunications, Inc.’s Petition for Stay of Order Setting Performance Measures, Benchmarks and Enforcement Mechanisms Issued May 14, 2002*, Dckt. No. 01-00193, ¶ 10 & n.1 (May 21, 2002) (“*BellSouth’s Motion to Stay*”).

³⁷ *Id.*

³⁸ *Id.* at 21.

³⁹ *Id.*; see also *id.* ¶ 12 (noting that each measurement change typically takes “anywhere from 45 to 270 days for the total process per measurement”).

⁴⁰ *Initial Order of Hearing Officer on July 12, 2001, Status Conference* at 3 & n.4.

⁴¹ *Id.*

of its 271 case. Similarly, BellSouth delayed producing state-specific flow-through data in accordance with AT&T's and SECCA's Interrogatory 36 for months, despite the fact that state-specific flow through data was central to the issues being addressed in Phase I of the OSS Docket. Ultimately, the Authority determined that BellSouth "failed to comply with lawful orders and/or findings of the agency" with regard to Interrogatory 36.⁴² Director Greer characterized BellSouth's continuing violations of the Authority's orders as "a corporate attitude that may well serve investors but is not likely to have the same effects on due process or the Authority's ability to meet its statutory obligation."⁴³ BellSouth should not be allowed to side-step its obligations under the Act or those imposed by the Authority by pressuring the Authority to move forward without data produced under the performance measures plan adopted for Tennessee.

The Authority has the right and the obligation to make a decision on whether BellSouth meets its Section 271 obligations in Tennessee. The FCC "has always held that an applicant's performance towards competing carriers in an actual commercial environment is the best evidence of nondiscriminatory access to OSS and other network elements."⁴⁴ When BellSouth seeks Section 271 authority for Tennessee from the FCC, the Commission will consider "all relevant evidence in the record, including state-specific factors identified by commenting parties,

⁴² *Notice of Complaint and Hearing* at 1 (February 5, 2002).

⁴³ *Transcript of Proceedings Before the Tennessee Regulatory Authority*, at 15 (Dec. 6, 2001).

⁴⁴ Memorandum Opinion and Order, *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services In Georgia and Louisiana* app. D ¶ 13 (F.C.C. May 15, 2002) (No. CC 02-35, FCC 02-147) ("Georgia/Louisiana Order").

the states, [and] the Department of Justice.”⁴⁵ “Evidence of satisfactory performance in another state cannot trump convincing evidence that an applicant fails to provide nondiscriminatory access to a network element in the applicant state.”⁴⁶ The Authority has directed BellSouth to provide state-specific performance data. The Authority should await the production of the data before considering BellSouth’s Section 271 application.

⁴⁵ *Id.*

⁴⁶ *Id.*

CONCLUSION

Although BellSouth enjoys the unilateral discretion regarding when to file its Section 271 application, it must incur the ramifications of the timing of its decision. The Authority should not waste its time and resources as well as those of the CLEC community in evaluating a filing that is incomplete on its face in that it fails to provide data in compliance with the Authority's performance measures order and information necessary to establish nondiscriminatory access to OSS. Accordingly, the Authority should suspend its evaluation of BellSouth's 271 filing until BellSouth (1) provides the Authority a complete Section 271 filing, including a decision in the OSS Docket that BellSouth provides nondiscriminatory access to its OSS; (2) implements Tennessee's performance measures plan; and (3) produces Tennessee-specific data in accordance with Tennessee's performance measures.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of June, 2002, a copy of the foregoing document was served on the parties of record, via hand-delivery, overnight delivery or U.S. Mail, postage prepaid, addressed as follows:

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